

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Farmers Cellular Telephone, Inc.)

Petition For Designation as an)
Eligible Telecommunications Carrier)

CC Docket No. 96-45
FCC 97-419

To: Chief, Wireline Competition Bureau

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

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Dated: September 6, 2002

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

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ATTACHMENTS

- Exhibit I: Letter from Alabama Public Service Commission, Administrative Law
Judge John Garner, to Azita Sparano, dated January 15, 2002.
- Exhibit II: In re: Petition for Declaratory Ruling, Alabama Public Service
Commission, Docket No. 26414, *Order*, rel. Mar. 2, 2000.

(continued)

ATTACHMENTS (continued)

Exhibit III: Declaration of Gary Kirk

Exhibit IV: Map of Farmers Service Territory and List of Service Territories
Requested

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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**PETITION FOR DESIGNATION AS AN
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Farmers Cellular Telephone, Inc. (“Farmers”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”),¹ and the Federal Communications Commission’s (“Commission” or “FCC”) *Public Notice on Section 214(e)(6) Procedures*,² hereby petitions the Wireline Competition Bureau (“WCB”) to designate Farmers as an eligible telecommunications carrier (“ETC”) for service areas in Alabama currently served by BellSouth Telecommunications, Inc. (“BellSouth”).³ Because the Alabama Public Service Commission (“APSC”) lacks jurisdiction to consider Farmers’ request under Section 214(e)(1) and (2),⁴ the FCC clearly has jurisdiction under Section 214(e)(6) to grant this petition. As demonstrated

¹ 47 U.S.C. § 214(e)(6)

² *Public Notice, Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, FCC 97-419, 12 FCC Rcd 22947 (1997) (“*Section 214(e)(6) Procedure Public Notice*”). In the Public Notice, the Commission delegated authority to the WCB’s predecessor to designate carriers as ETCs.

³ Farmers’ service territories are listed on Exhibit IV.

⁴ See Exhibit I, Letter from Alabama Public Service Commission, Administrative Law Judge John Garner, to Azita Sparano, dated January 15, 2002.

below, Farmers meets all statutory and regulatory requirements for ETC designation to serve Alabama customers, and designating Farmers as an ETC will serve the public interest. Because Farmers seeks ETC designation in a non-rural wireline area, there is no need to redefine Farmers' service area. Accordingly, Farmers respectfully requests withdrawal of its prior filings concerning this matter, namely: (a) petition filed July 23; (b) amended petition filed August 19; and (c) errata to amended petition filed August 26, 2002. The instant Petition replaces and supersedes each of these prior filings. In addition, Farmers respectfully requests that the effective date of the instant Petition be deemed simultaneous with its filing with the Commission, *i.e.*, September 6, 2002.

I. FARMERS' UNIVERSAL SERVICE OFFERINGS

Farmers is a commercial mobile radio service ("CMRS") carrier, licensed by the Commission to provide cellular communication services in Rural Service Area ("RSA") 308B2, which consists of Dekalb and Cherokee Counties, and part of Jackson County in northeastern Alabama, as illustrated by the map in Exhibit IV hereto. Farmers, which has provided service for over 10 years and is locally owned and operated, is well-positioned to bring competitive universal service to Alabama consumers. Farmers seeks to be designated as a universal service eligible telecommunications carrier ("ETC") to provide wireless ETC service in the non-rural Alabama wireline service territories of BellSouth that coincide with RSA 308B2, as shown in Exhibit IV hereto.

Farmers provides all of the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission's Rules, throughout its wireless service area in Alabama. Upon ETC designation, Farmers will make available to consumers in the designated ETC service areas depicted in Exhibit IV hereto a universal service offering over its existing cellular network infrastructure and spectrum, including the same

antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities the company uses to serve existing mobile cellular customers. Farmers will provide service to any requesting customer within its designated ETC service areas and, if necessary, will deploy any additional facilities necessary to do so.

II. FARMERS SATISFIES ALL THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Farmers satisfies each of the five elements required for ETC designation by the Commission set forth in the Commission's *Section 214(e)(6) Procedure Public Notice*, as shown below.

A. Farmers is not Subject to the Jurisdiction of the Alabama Public Service Commission

Farmers is a CMRS provider, and the Commission has previously recognized that a CMRS provider may seek designation as an ETC.⁵ Section 254(e) of the Communications Act of 1934 provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.” 47 U.S.C. §214(e). Pursuant to Section 214(e)(6) of the Act, 47 U.S.C. §214(e)(6), the Commission may, upon request, designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”

⁵ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *First Report and Order*, 12 FCC Rcd. 8776, 8858-59, ¶ 145 (1997) (“Universal Service First Report and Order”); See also, Federal-State Joint Board on Universal Service, *Access Charge Reform, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking*, FCC 99-119 at ¶ 72 (rel. May 28, 1999).

In the *Section 214(e)(6)Procedure Public Notice*, the Commission established that a carrier must demonstrate it “is not subject to the jurisdiction of a state commission.” In its *Twelfth Report and Order*, the Commission stated that where a carrier provides the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation, the Commission will consider requests filed pursuant to Section 214(e)(6).⁶

Through its consultant, Farmers petitioned the APSC concerning its jurisdiction over CMRS carriers. In response, an APSC Administrative Law Judge (“ALJ”) notified Farmers’ consultant that CMRS providers are not subject to state jurisdiction in Alabama and therefore must seek ETC designation from the FCC pursuant to Section 214(e)(6).⁷ The ALJ’s determination was based on a Declaratory Ruling the APSC issued in March 2000, in Docket 26414, which concluded that, as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June 1999, the APSC has no authority to regulate *in any respect* cellular services, broadband personal communications services and commercial mobile radio services in Alabama.⁸ For this reason, Farmers is “not subject to the jurisdiction of a state commission” and consideration of this Petition by the Commission is proper.

⁶ Federal State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Twelfth Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12264 (2000) (“*Twelfth Report and Order*”).

⁷ See Exhibit I, Letter from Alabama Public Service Commission, Administrative Law Judge John A. Garner, to Azita Sparano, dated January 15, 2002.

⁸ A copy of this Order is attached as Exhibit II.

B. Farmers Provides all of the Services Supported by the Federal High-Cost Universal Service Program.

To be designated an ETC, a petitioner must be a common carrier and must offer and advertise the supported services throughout the designated service area.⁹ The *Section 214(e)(6) Procedure Public Notice* requires a certification that the carrier provides each of the supported services. The declaration attached as Exhibit III hereto provides the mandatory certification while demonstrating that Farmers offers, “or will be able to offer, all of the services designated for support by the Commission,” as Section 214(e)(6) requires.¹⁰ Farmers currently offers each of the supported services specified in Section 54.101(a) of the Commission’s Rules throughout its existing cellular service area, and, upon designation as an ETC, will be capable of providing a universal service offering that includes all supported services for consumers in its designated ETC service areas in Alabama, as shown in Exhibit IV hereto.¹¹

1. Voice-Grade Access to the Public Switched Network. The Commission concluded that voice-grade access means the ability to make and receive phone calls, within a

⁹ 47 U.S.C. §214(e)(1).

¹⁰ *Designation of Fort Mojave Telecommunications, Inc., at al., as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd. 4547, 4552, ¶ 11 (CCB 1998) (“Fort Mojave”). *Fort Mojave* makes it clear that the Commission will designate carriers as ETCs, pursuant to Section 214(e)(6), upon finding that they “offer or will be able to offer” the supported services throughout the service area. A Declaration attesting to Farmers’ ability and commitment to offer each of the supported services is attached hereto at Exhibit III.

¹¹ 47 C.F.R. § 54.101(a). The Commission has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms: (1) Voice grade access to the public switched network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to emergency services; (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualifying low-income consumers.

bandwidth of approximately 2700-Hertz within 300 to 3000 Hertz frequency range.¹² As an existing cellular service provider in Alabama, Farmers provides voice-grade access to the public switched network. Through interconnection agreements with ILECs, Farmers is able to originate and terminate telephone service for all of its subscribers. All customers of Farmers are able to make and receive calls on the public switched network within the specified bandwidth.

2. Local Usage. Farmers service includes local usage that allows customers to originate and terminate calls within the local calling area without incurring toll charges. The service allows for unlimited local calling for a flat-rated monthly charge. Farmers currently offers several service options that include varying amounts of local usage in monthly service plans. To date, the Commission has not quantified any minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue.¹³ Any minimum local usage requirement established by the Commission as a result of the above mentioned proceeding will be applicable to all designated ETCs. Farmers will comply with any and all minimum local usage requirements adopted by the Commission. Thus, even though the Commission has yet to adopt any specific quantity of minimum local usage ETCs must provide for designation, Farmers clearly satisfies the local usage criterion for ETC designation.

3. Functional Equivalent of Touch-Tone (“DTMF”) Signaling. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the Commission permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of

¹²See Universal Service First Report and Order, 12 FCC Rcd at 8810-11 (1997).

this service requirement.¹⁴ Farmers currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.¹⁵ Farmers, therefore, meets the requirements of providing DTMF signaling or its functional equivalent.

4. Single Party Service. “Single-party service” means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line.¹⁶ The Commission concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user’s particular transmission. Farmers meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.¹⁷

5. Access to Emergency Service. The ability to reach a public emergency service provider through dialing 911 is a required universal service offering. Customers can reach an emergency dispatch, or public safety answering point (“PSAP”), by dialing “911.” Upon dialing “911,” the customer’s emergency call will be routed to the appropriate PSAP.

Enhanced 911 (“E911”), which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is required only if a public emergency service provider makes arrangements with the local provider for delivery of such information. A wireless carrier such as Farmers is not required to provide E911 services until a local emergency provider has made arrangements for delivery of ALI and ANI from

¹³See, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998).

¹⁴ 47 C.F.R. § 54.101(a)(3)

¹⁵ Universal Service First Report and Order, 12 FCC Rcd at 8815, ¶ 71 (1997).

¹⁶ See Universal Service First Report and Order, 12 FCC Rcd at 8810.

¹⁷ *Id.*

carriers.¹⁸ Farmers has implemented Phase I of the Commission's requirement for access to emergency services. Farmers currently provides all of its customers with access to emergency services by dialing 911. To date, public emergency service providers in Farmers' service territory have neither requested Phase II compliance nor made arrangements for delivery of ANI or ALI from Farmers. The Commission has designated other wireless providers as ETCs despite the current unavailability of E911.¹⁹ By providing 911 service and anticipating capability to provide E911 service upon request, Farmers meets the Commission's requirement to provide access to emergency service.

6. Access to Operator Services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. Farmers currently offers its subscribers access to operator services for the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third party calls, as well as obtaining related information. Moreover, Farmers will make such services available throughout its designated service area. Therefore, Farmers meets this requirement by providing all of its customers with access to operator services.

7. Access to Interexchange Service. An ETC providing universal service must offer consumers access to interexchange service to make or receive toll or interexchange calls.

¹⁸ See, *id.* at 8815-8817.

¹⁹ See, e.g., Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 02-174, rel. Jan. 25, 2002 (designating Guam Cellular and Paging, Inc. ("Guamcell") as an ETC, even though Guamcell provided no E911 service to its subscribers; at the time of the subject ETC Petition, no public emergency service provider had requested that Guamcell provide Phase I or Phase II E911.) See Guamcell Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam, filed Jul. 26, 2001 at 6.

Customers will have access to live or automatic operator assistance for the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third party calls, as well as obtaining related information. Farmers has direct interconnection agreements with one or more interexchange carriers (“IXCs”), as well as indirect connections with other IXCs. As a result, Farmers meets the requirement to provide all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements it has with an IXC.

8. Access to Directory Assistance. The ability to place a call to directory assistance is a required service offering of an ETC. Farmers meets this requirement by providing all of its customers with access to information contained in directory listings by dialing “411” or “555-1212.”

9. Toll Limitation for Qualifying Low-Income Customers (Lifeline and Link-Up Services). An ETC must offer toll restriction, which can be in the form of “toll control” or “toll blocking” services to qualifying Lifeline universal service customers at no charge. Toll blocking allows customers to block the completion of outgoing toll calls. Toll control allows the customer to limit the toll charges a subscriber can incur during a billing period. The Commission’s current rules require an ETC to provide either toll control or toll blocking as part of the toll limitation services required under 47 C.F.R. § 54.101(a)(9).²⁰ Certain low-income consumers will be eligible to pay reduced connect charges and monthly fees under the Federal Link-Up and Lifeline programs, and customers may contact Farmers for more information on eligibility criteria. If enrolled in Lifeline, a customer can choose to have Farmers block all attempted toll calls

²⁰ See Federal-State Joint Board on Universal Service, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72* 13 FCC Rcd 5318 (1997).

originating from the customer's phone. Currently, Farmers provides toll blocking services for international calls and customer selected toll calls. Farmers will utilize the same toll blocking technology to provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

C. Farmers Provides the Supported Services Using its Own Facilities

Farmers provides the supported services under Section 214(e)(1)(A) of the Act and Section 54.101(a) of the Commission's rules using Farmers' existing cellular network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network.

D. Farmers will Advertise its Universal Service Offering

Farmers will advertise the availability of its universal service offering, and the charges therefor, using media of general distribution. Currently, Farmers employs several advertising media to promote its service offerings, including television, radio, newspaper, and billboard advertising, as well as special targeted advertising. Farmers will expand upon these media, as necessary, to insure that consumers within its ETC designated service areas are fully informed of its universal service offering. Moreover, given the fact that ETCs receive universal service support only to the extent they serve customers, and given the investment Farmers plans to make to enhance its network to fully serve the universal service needs of consumers in Alabama, Farmers will have strong economic incentives, reinforcing its statutory obligations, to vigorously promote its universal service offering in Alabama.

E. Designating Farmers as an ETC will Advance the Public Interest

Farmers requests designation as an ETC in the non-rural wireline service areas of BellSouth that coincide with RSA 308B2, as shown in Exhibit IV hereto. Farmers will make available its universal service offering, including all of the services and functionalities set forth

by the Commission in 47 C.F.R. § 54.101, throughout its ETC designated service areas. The designation of Farmers as an additional ETC clearly is in the public interest.²¹ First, designating Farmers as an ETC will facilitate competition in the provision of universal service to the benefit of consumers in Alabama.²² Second, designating Farmers as an ETC will advance universal service by bringing consumers in Alabama new telecommunications services, including wireless local loop service. Third, designating Farmers as an ETC in the requested areas of Alabama will promote rapid development of new technologies in those areas.

III. ANTI-DRUG ABUSE CERTIFICATION

Farmers certifies that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. § 862.²³

²¹ 47 U.S.C. § 214(6)(2). Under Section 214(e)(6), the Commission stands in the place of a state commission for this purpose.

²² See *Universal Service First Report and Order*, 12 FCC Rcd. At 8781, ¶ 4 (quoting Joint Explanatory Statement recital that goal of 1996 Act is to establish “a pro-competitive ... framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to *all* Americans by opening *all* telecommunications markets to competition”) (*emphasis added*).

²³ 21 U.S.C. § 862. See attached Certification at Exhibit III.

VI. CONCLUSION

For the foregoing reasons, the Commission should designate Farmers as an ETC for its requested designated service territories in Alabama.

Respectfully Submitted,

FARMERS CELLULAR TELEPHONE, INC.

/s/ Michael K. Kurtis

Gary Kirk, President
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Rainsville, AL 359861

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Jerome K. Blask
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Washington, D.C. 20007

Its Attorneys

Dated: September 6, 2002

EXHIBIT I



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

January 15, 2002

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

Azita Sparano
Director - Regulatory and Policy
John Staurulakis Incorporated
Brookside Court, Suite 135
4625 Alexander Drive
Alpharetta, Georgia 30022

Dear Ms. Sparano:

I am in receipt of your Request for Clarification Regarding the Alabama Public Service Commission's Jurisdiction for Designation of Commercial Mobile Radio Service Providers as Eligible Telecommunications Carriers (the "filing") which you submitted to the Alabama Public Service Commission (the "APSC") on January 14, 2002, on behalf of your client Farmers Cellular Telephone, Inc. ("FCT"). I understand from your filing that FCT is a Commercial Mobile Radio Service ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide cellular telecommunications services.

According to your representations, the service territory of FCT encompasses Rural Service Area 308B2. Said territory covers the northeastern portion of Alabama, including DeKalb, Cherokee, and part of Jackson counties. I understand from your filing that FCT is seeking designation as an ETC in a portion of its service territory that includes both rural and non-rural Alabama wireline service areas.

As recognized in your filing, state commissions have primary responsibility under 47 USC §214(e) for the designation of eligible telecommunications carriers ("ETCs") in their respective jurisdictions for universal service purposes. The APSC established the guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997. As a threshold matter, your filing seeks clarification as to whether the APSC has jurisdiction over FCT's request to be designated as a universal service eligible telecommunications carrier in a portion of its service territory that includes both rural and non-rural Alabama wireline service areas.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services and commercial mobile radio services is one that was rather recently addressed by the APSC. The APSC indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June

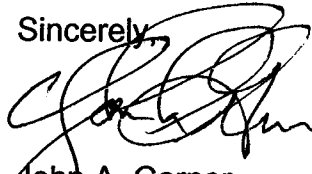
AZITA SPARANO
JANUARY 15, 2002
PAGE #2

of 1999, the APSC has no authority to regulate *in any respect* cellular services, broadband personal communications services and commercial mobile radio services in Alabama.

Given the above conclusion by the APSC, it seems rather clear that the APSC has no jurisdiction to take action on any request by FCT for ETC status in this jurisdiction to provide wireless ETC service. FCT should instead pursue its ETC designation with the FCC as provided by 47 USC §214(e)(6).

Although the views expressed herein are those of your writer and do not necessarily constitute an official action of the APSC, I am confident that this writing provides the clarification you requested concerning the ETC designation of your client. Should you need further clarification in order to pursue an ETC designation for FCT at the FCC, please do not hesitate to contact me at (334) 242-5200.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Garner", written over a horizontal line.

John A. Garner
Administrative Law Judge

JAG:klr

EXHIBIT II

Alabama Public Service Commission

Orders

BELLSOUTH MOBILITY, INC.;

POWERTEL, INC.;

PRIMECO PERSONAL COMMUNICATIONS, L.P.;

GTE WIRELESS INCORPORATED;

GTE MOBILNET OF ALABAMA INCORPORATED;

GTE MOBILNET OF GADSDEN INCORPORATED;

ALLTEL COMMUNICATIONS OF ALABAMA;

TRITEL COMMUNICATIONS, INC.,

Petitioners

**IN RE: PET
DECLARATORY RU**

DOCKET 26414

ORDER

BY THE COMMISSION:

By a joint filing received December 27, 1999, providers of Commercial Mobile Radio Service ("CMRS") in Alabama petitioned the Commission for a declaratory ruling that the Commission has no authority to regulate CMRS or any terms or conditions of services offered by CMRS providers. The petitioning CMRS providers are BellSouth Mobility, Inc.; Powertel, Inc.; PrimeCo Personal Communications, L.P.; GTE Wireless Incorporated; GTE Mobilnet of Alabama Incorporated; GTE Mobilnet of Gadsden Incorporated; ALLTEL Communications of Alabama; and Tritel Communications, Inc. (hereinafter collectively called "the Petitioners")

The Petitioners contend that the Alabama legislature has excluded CMRS and CMRS providers from the regulatory authority of the Commission by amendments to § 40-21-120 of the Alabama Code that became effective on June 9, 1999.

DISCUSSION AND CONCLUSIONS

The Commission has the authority to regulate a service or the providers of a service only to the extent

that the Alabama legislature has given the Commission such authority. Boswell v. Whatley, 345 So.2d 1324 (Ala.1977). The Commission's authority to regulate CMRS and CMRS providers is found in the Alabama Radio Utility Act, Alabama Code § 37-4-100 through 37-4-117.

Effective August 10, 1994, the United States Congress preempted Alabama and all other states from exercising rate and entry regulation over CMRS and CMRS providers. See Omnibus Budget Reconciliation Act of 1993, § 6002(b), codified at 47 U.S.C. § 332(c)(3) (hereinafter called "the Budget Act"). The Budget Act did not preempt states from regulating terms and conditions of service unrelated to rates and entry, however. Accordingly, after the Budget Act, the Commission retained its regulatory authority over CMRS and CMRS providers derived from the Alabama Radio Utility Act to the extent that such authority was not preempted by the Budget Act.

By Order entered March 9, 1998, the Commission clarified its regulatory authority over CMRS and CMRS providers. See Order, RE: Regulation of other terms and conditions of services offered by Commercial Mobile Radio Service Providers in the State of Alabama, Docket 26414 (the "March 9, 1999, Order"). In the March 9, 1999, Order the Commission determined that it had authority over and would regulate CMRS and CMRS providers concerning "customer billing information, billing disputes and other consumer protection matters, facilities siting issues, transfers of control, bundling of services, the requirement that carriers make capacity available on a wholesale basis and all other matters that fall within a state's lawful authority." See March 9, 1999, Order at 2. The Commission ordered CMRS providers to submit annual reports, pay supervision and inspection fees, submit tariffs describing the terms and conditions of service, and file appropriate forms with the Commission including notifications of intent to provide service in Alabama. Id. As discussed above, the Commission found its authority for so regulating CMRS and CMRS providers in the Alabama Radio Utility Act, Ala. Code § 37-4-100 through 37-4-117. See March 9, 1999, Order at 1-2.

In 1990, the Alabama legislature removed the Commission's authority to regulate "cellular radio telecommunication provider[s], "see Ala. Code § 40-21-120(1)b and (2) (prior to 1999 amendments), and "cellular radio telecommunications services." see Ala. Code § 40-21-120(1)a and (2) (prior to 1999 amendments).

Effective June 9, 1999, the Legislature amended § 40-21-120 to delete the word "radio" from §§ 40-21-120(1)b and (2). In this amendment, the Legislature also expanded the definition of "cellular telecommunication services" in Ala. Code § 40-21-120(1)a and the definition of "cellular telecommunication provider" in Ala. Code § 40-21-120(1)b. Specifically, the Legislature defined "cellular telecommunications services" to include "cellular services," "broad band personal communications services," and "commercial mobile radio services." See Ala. Code § 40-21-120. The Legislature defined "cellular telecommunication provider" as "all licensees of the Federal Communications Commission to provide cellular telecommunication services, broadband personal communications services, and commercial mobile radio services, and shall include all resellers of such services." See Ala. Code § 40-21-120(1)b.

The Commission finds that in the June 9, 1999, amendments to Ala. Code § 40-21-120(2) and (1)a, the Legislature removed the Commission's regulatory authority over cellular telecommunications services, which includes all cellular services, broadband personal communications services, and CMRS. The Commission further finds that in the June 9, 1999, amendments to Ala. Code § 40-21-120(2) and (1)b, the Legislature removed the Commission's regulatory authority over cellular telecommunications providers, which includes all licensees of the Federal Communications Commission to provide cellular services, broadband personal communications services and CMRS. Accordingly, the Commission finds that the Petitioners' Petition for Declaratory Ruling is due to be granted as a matter of law and that the Commission should clarify its regulatory authority in light of the June 9, 1999, amendments to Ala.

Code § 40-21-120.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That Petitioners' Petition for Declaratory Ruling is hereby GRANTED.

IT IS, THEREFORE, DECLARED BY THE COMMISSION, That as a result of the June 9, 1999, amendments to Ala. Code §§ 40-21-120(2) and (1)a, the Commission has no authority to regulate in any respect cellular services, broadband personal communications services, and commercial mobile radio services.

IT IS FURTHER DECLARED BY THE COMMISSION, That as a result of the amendments to Ala. Code §§ 40-21-120(2) and (1)b, the Commission has no authority to regulate in any respect licensees of the Federal Communications Commission that provide cellular services, broadband personal communication services, and commercial mobile radio services in the State of Alabama, including resellers of such services, insofar as the Commission's regulation of such licensees pertain to such services.

IT IS FURTHER ORDERED BY THE COMMISSION, That the Commission's Order Re Regulation of other terms and conditions of services offered by Commercial Mobile Radio Service providers in the state of Alabama, Docket 26414 (March 9, 1999), is hereby VACATED.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof to apply retroactively in accordance with the effective dates provided in the June 9, 1999, amendments to Ala. Code § 40-21-120.

DATED at Montgomery, Alabama, this 2d day of March, 2000.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

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EXHIBIT III

**Farmers Cellular Petition for Designation as ETC,
Filed August 19, 2002**

Declaration of Gary Kirk

I, Gary Kirk, do hereby declare under penalty of perjury that:

- 1. I am General Manager of Farmers Cellular Telephone, Inc. ("Farmers");**
- 2. This Declaration is submitted in support of Farmers' foregoing Petition for Designation as an Eligible Telecommunications Carrier ("Petition") to serve in Alabama;**
- 3. I have reviewed the Petition and the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge;**
- 4. Farmers currently provides cellular service in Rural Service Area ("RSA") 308B2, including all areas comprising its designated service area. as stated in the Petition, Farmers meets the criteria for ETC designation as explained herein;**
- 5. I hereby certify that, as described in the Petition, Farmers is not subject to the jurisdiction of a state commission;**
- 6. Farmers currently offers and is able to provide, within its designated service area, the services and functionalities identified in 47 C.F.R. §54.101(a) listed below and fully described in the Petition;**
- 7. Voice-grade access to the public switched telephone network;**
 - a. Local Usage;**
 - b. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent;**
 - c. Single-party service or its functional equivalent;**
 - d. Access to emergency services;**
 - e. Access to operator services;**
 - f. Access to interexchange service;**
 - g. Access to directory assistance;and**
 - h. Toll limitation for qualifying low-income consumers;**

**Farmers Cellular Petition for Designation as ETC,
Filed August 19, 2002**

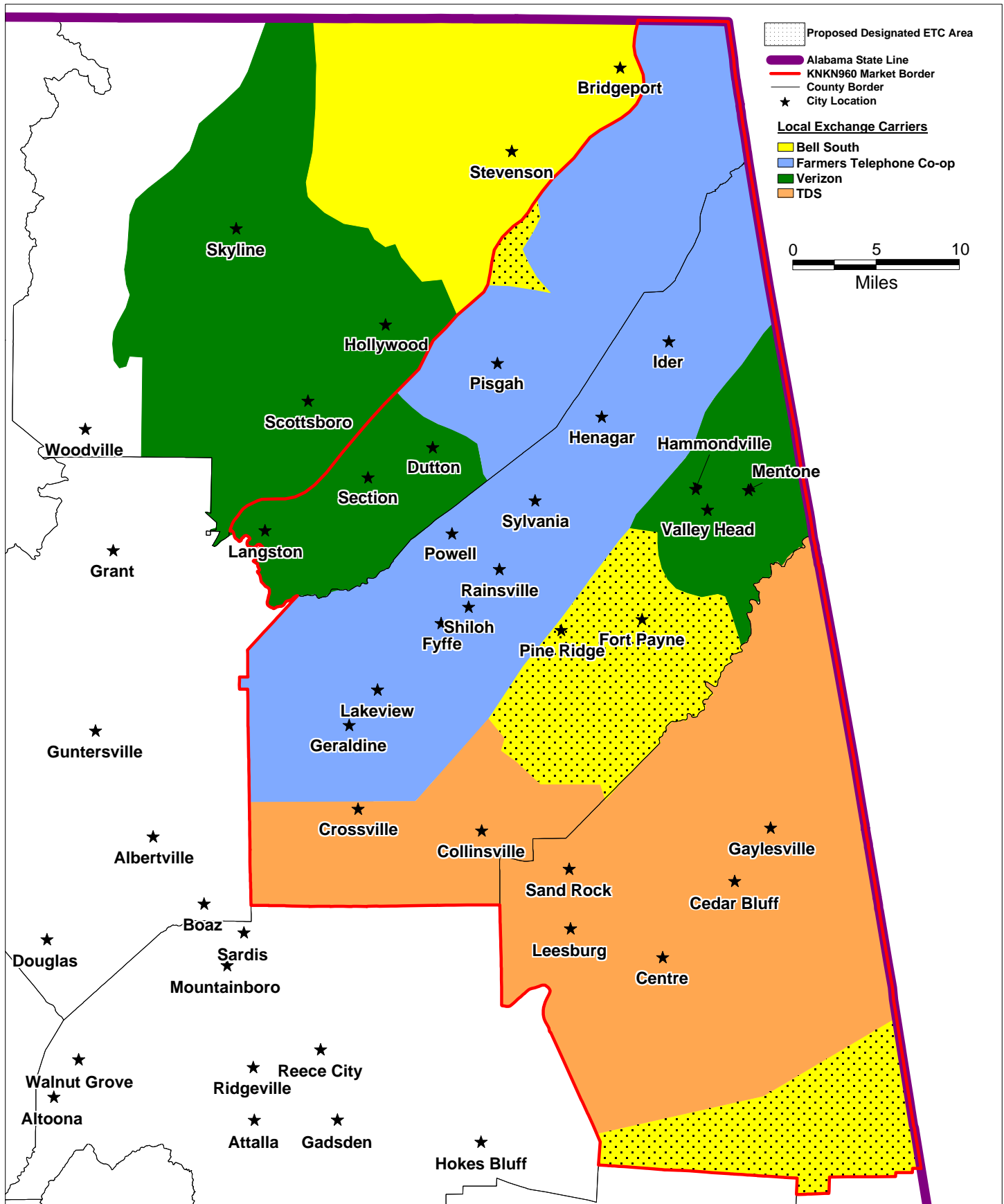
8. Farmers will provide the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;
9. Farmers advertises, or will advertise, the availability of supported services and the charges therefor using media of general distribution as described in the Advertising Plan described in the Petition;
10. To the best of my knowledge, neither Farmers, nor its officers, directors, or persons holding 5% or more of Farmers' outstanding stock or shares (voting and/or nonvoting) ,as specified in Section 1.2002(b) of the Commission's Rules, are subject to a denial of federal benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862; and
11. The foregoing is true, complete and correct to the best of my knowledge, information and belief.



Gary Don Kirk

Dated: August 16, 2002

EXHIBIT IV

**Service Territories Requested****September 5, 2002**

Farmers hereby requests ETC designation in those certain ILEC areas within the Alabama counties of Jackson, DeKalb, and Cherokee currently served by BellSouth, which are wholly contained within RSA 308 B2. These areas include parts if not all of the exchange areas of Bridgeport, Fort Payne, Piedmont, and Stevenson.

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CERTIFICATE OF SERVICE

I, Mika C. Summers, a secretary with the law offices of Kurtis & Associates, P.C., do hereby certify that I have on this 6th day of September, 2002 had a copy of the foregoing PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER sent via Overnight UPS Delivery to the following:

Shannon Lipp*
Wireline Competition Bureau
Telecommunications Access Policy Division
Federal Communications Commission
445 12th Street, S.W.
Room 2A 104
Washington, D.C. 20554

Sheryl Todd*
Wireline Competition Bureau
Telecommunications Access Policy Division
Federal Communications Commission
445 12th Street, S.W.
Room 5B 540
Washington, D.C. 20554

Administrative Law Judge John Garner
Alabama Public Service Commission
RSA Building
100 North Union Street
Suite 850
Montgomery, Alabama 36101

Walter L. Thomas, Jr. Secretary
Alabama Public Service Commission
RSA Building
100 North Union Street
Suite 850
Montgomery, Alabama 36101

/s/ Mika C. Summers
Mika C. Summers

* Via Hand-Delivery